STATE OF MICHIGAN

COURT OF APPEALS

BARBARA DROOMERS, Personal Representative of the Estate of WARREN DROOMERS,

Plaintiff-Appellee,

v

JOHN R. PARNELL, PARNELL & ASSOCIATES, P.C., and MUSILLI, BAUMGARDNER, WAGNER & PARNELL, P.C.,

Defendants,

and

RALPH MUSILLI and WALTER BAUMGARDNER,

Appellants.

UNPUBLISHED
February 15, 2011

No. 296037
Oakland Circuit Court
LC No. 2000-024779-CK

Before: SAAD, P.J., and K. F. KELLY and DONOFRIO, JJ.

PER CURIAM.

In this appeal by right, appellants[1], Ralph Musilli and Walter Baumgardner, challenge the trial court's order awarding plaintiff attorney fees and costs as a sanction under MCR 2.114, and denying appellants' motion for entry of an order of satisfaction of judgment. We affirm.

[1] Appellants, Ralph Musilli and Walter Baumgardner, were not named as individual defendants in the original complaint. Instead, they were officers of defendant Musilli, Baumgardner, Wagner & Parnell, P.C. Because they were not named defendants to the original lawsuit but rather are appealing an order from the trial court finding them personally liable for the sanctions at issue here, we will refer to them as appellants throughout this opinion.

I. BASIC FACTS & PROCEDURAL BACKGROUND

This appeal originally stems from an underlying breach of contract action that plaintiff's decedent, Warren Droomers,[2] filed against defendants, John R. Parnell, Parnell & Associates, P.C., and Musilli, Baumgardner, Wagner & Parnell, P.C. (MBWP). The procedural history of this case is lengthy, having gone through multiple appeals at this Court.

The original claim is related to MBWP's representation of an individual in her lawsuit against General Motors (GM). GM and the individual settled the case, and MBWP received a contingent fee in the amount of $1,057,909.80. On July 25, 2000, Warren Droomers, an attorney, filed a complaint against MBWP, alleging that he referred the GM case to defendants and, under a contractual relationship with MBWP, was entitled to a referral fee in the amount of $352,636.60. Warren Droomers further alleged that he assisted Parnell with the GM case and was entitled to "*quantum meruit* for his valuable services."

On December 19, 2002, the trial court ordered MBWP to deposit $352,636.60 into an escrow account and to refrain from transferring any of the firm assets until the escrow account was paid in full. After a bench trial in April and May 2003, the trial court rejected plaintiff's breach of contract claim but found for plaintiff and against defendants Parnell and MBWP on the theory of quantum meruit, ordering defendants to pay plaintiff in the amount of $240,000, plus costs and statutory interest.

After the bench trial, on October 10, 2003, plaintiff filed a motion for order to show cause why MBWP, appellants, and Parnell should not be held in contempt of court for failing to comply with the trial court's December 19, 2002 order to place money into an escrow account. On October 29, 2003, the trial court found MBWP in contempt of court and appointed a receiver for MBWP. On December 16, 2003, the trial court held Parnell, Musilli and Baumgardner in contempt for failing to provide documents to the receiver and for violating the December 19, 2002, order. The trial court ordered them to spend 30 days in jail. Appellants appealed the contempt order. This Court affirmed the trial court's contempt ruling, but remanded for a determination whether the contempt order was civil or criminal in nature. *Droomers v Parnell*, unpublished opinion per curiam of the Court of Appeals, issued June 30, 2005 (Docket No. 253455), slip op at 9.

On remand, after hearing oral argument on December 14, 2005, the trial court entered an order holding appellants in criminal contempt and ordering them to serve 30 days in jail and to pay a judgment in the amount of $431,350. The trial court rejected appellants' argument that the amount of judgment should be offset by Parnell's alleged settlement with plaintiff.

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[2] Warren Droomers died on September 3, 2000. Barbara Droomers, as the personal representative of the Estate of Warren Droomers, was substituted as plaintiff on April 18, 2001.

On January 4, 2006, appellants filed a motion to amend the judgment, arguing in part that it must account for plaintiff's settlement with and release of Parnell, the terms of which must be disclosed. On the January 31, 2006, the trial court entered an order denying appellants' motion.

Appellants appealed the December 14, 2005, judgment on February 17, 2006. This Court dismissed the appeal pursuant to the parties' stipulation on April 21, 2006. *Droomers v Parnell*, unpublished order of the Court of Appeals, entered April 21, 2006 (Docket No. 268480). Around the same time, in March 2006, the trial court dismissed with prejudice its contempt order and the entire action pursuant to a settlement agreement between the parties.

However, the settlement between the parties fell through. On May 1, 2006, plaintiff filed an emergency motion to reinstate and execute the December 14, 2005, contempt judgment against appellants. After a hearing, where appellants' counsel failed to appear, and after appellants filed motions to disqualify the trial judge, Judge Mester, because of a related federal lawsuit and a complaint with the Judicial Tenure Commission, the trial judge eventually entered orders, on June 29, 2007, and April 16, 2008, reinstating the December 2005 criminal contempt judgment against appellants in its entirety.

Appellants appealed the reinstatement of the contempt judgment on May 22, 2007. This Court affirmed the reinstatement of the contempt judgment on February 12, 2009, but remanded the case to the trial court to determine the amount of statutory interest owed to plaintiff. *Droomers v Parnell*, unpublished opinion per curiam of the Court of Appeals, issued February 12, 2009 (Docket No. 278162), slip op, at 1, 9. Appellants moved for reconsideration, arguing that this Court failed to address their argument concerning Parnell's settlement. This Court denied the motion for reconsideration on April 3, 2009. *Droomers v Parnell*, unpublished opinion per curiam of the Court of Appeals, issued April 3, 2009 (Docket No. 278162). Appellants filed a motion for leave to appeal with the Supreme Court on May 12, 2009, which was denied on September 28, 2009. *Droomers v Parnell*, 485 Mich 895; 772 NW2d 422 (2009).

On remand, this case was reassigned to Judge Lisa Ortlieb Gorcyca in the trial court who heard a number of motions concerning the updated amount of interest. She also heard appellants' motions related to plaintiff's settlement agreement with Parnell, including a request to subpoena Parnell, which the trial judge denied because it was outside the scope of the remand. On April 1, 2009, Judge Gorcyca entered a new judgment, including interest, costs and attorney fees in the amount of $525,981.21.

On August 18, 2009, appellants filed a motion for entry of an order of satisfaction of judgment – the motion that is at issue here – arguing that plaintiff's settlement with Parnell constituted a partial or full satisfaction of the underlying judgment. Plaintiff argued in response that appellants were in effect asking the court to modify the December 2005 judgment, which the trial court was not authorized to do. Plaintiff also requested sanctions against appellants for filing a frivolous motion. In their reply brief, appellants denied seeking to amend the December 14, 2005, judgment. They posited that MCR 2.620 offered them a procedure for recognizing the settlement of an outstanding judgment.

On September 1, 2009, the trial court denied appellants' motion for entry of an order of satisfaction of the judgment because of plaintiff's settlement agreement with Parnell, noting that this Court had rejected a similar argument on two occasions and the trial court had rejected a similar argument on four occasions. The trial court also ordered sanctions against appellants for filing a frivolous motion. Appellants filed a motion for reconsideration of the trial court's order or relief from judgment on September 22, 2009, which the trial court denied on January 5, 2010.

Appellants now appeal the sanctions order and the denial of their motion for entry of an order of satisfaction of the judgment.

II. JURISDICTION

Initially, we address plaintiff's argument that this Court lacks jurisdiction to decide this appeal. Plaintiff argues that this Court lacks jurisdiction to consider both of appellants' issues because (1) there is no appeal of right from a postjudgment motion pertaining to a satisfaction of judgment, and (2) the order awarding attorney fees and costs is not the type of postjudgment order that is appealable by right. We agree that this Court lacks jurisdiction over appellants' challenge to the denial of their motion for entry of an order of satisfaction of judgment. There is no appeal by right with respect to the order denying either appellants' motion for reconsideration or relief from judgment, or the postjudgment motion for entry of order of satisfaction of judgment. MCR 7.203(A)(1) states, in relevant part, that this Court has jurisdiction of an appeal of right regarding "[a] final judgment or final order of the circuit court . . . as defined in MCR 7.202(6) . . . ." Neither the order denying appellants' motion for reconsideration or relief from judgment, nor the order denying appellants' postjudgment motion for entry of an order of satisfaction of judgment is a final judgment or order as defined in MCR 7.202(6). Although this Court also has jurisdiction of an appeal of right with respect to a judgment or order from which an appeal of right has been established by law or court rule, MCR 7.203(A)(2), we are aware of no law or court rule, and appellants offer none, affording an appeal of right in the circumstances presented here.

This Court does, however, have jurisdiction to decide appellants' issue pertaining to the award of attorney fees and costs because that portion of the January 5, 2010, order constitutes a final judgment under MCR 7.202(6)(a)(iv). That provision defines a final judgment or order as "a postjudgment order awarding or denying attorney fees and costs under MCR 2.403, 2.405, 2.625 *or other law or court rule*[.]" MCR 7.202(6)(a)(iv) (emphasis added). Here, the trial court awarded attorney fees and costs as a sanction for filing a frivolous motion under MCR 2.114. Thus, that portion of the order constitutes a final judgment or order. "An appeal from an order described in MCR 7.202(6)(a)(iii)-(v) is limited to the portion of the order with respect to which there is an appeal of right." MCR 7.203(A)(1). Accordingly, because an appeal of right exists only from the portion of the trial court's order awarding sanctions, this Court has jurisdiction to decide appellants' challenge to the imposition of sanctions only.

III. SANCTIONS

Appellants argue on appeal that the trial court erred in ordering sanctions because their motion for satisfaction of the judgment was not an attempt to harass, delay or increase the cost of litigation. We disagree. "We review for clear error a trial court's determination whether to impose sanctions under MCR 2.114." *Guerrero v Smith*, 280 Mich App 647, 677; 761 NW2d

723 (2008). "A decision is clearly erroneous when, although there may be evidence to support it, this Court is left with a definite and firm conviction that a mistake was made." *Id.*

Under MCR 2.114(D), an attorney or a party "is under an affirmative duty to conduct a reasonable inquiry into both the factual and legal basis of a document before it is signed." *Guerrero*, 280 Mich App at 677. MCR 2.114(D) provides:

> The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that
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> (1) he or she has read the document;
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> (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
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> (3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

If a document is signed in violation of MCR 2.114(D), the trial court "shall" impose sanctions on the party signing the document. MCR 2.114(E); *Guerrero*, 280 Mich App at 678. Thus, sanctions are mandatory if a party violates MCR 2.114(D). *Id.*

Here, the record fully supports the trial court's finding that appellants' motion for entry of an order of satisfaction of judgment was brought to harass, delay the proceeding, and/or increase the cost of litigation. Further, considering the extensive history of this case, appellants cannot seriously contend that their motion was warranted by existing law or brought in a good-faith effort to extend or modify existing law. Appellants first unsuccessfully raised their argument regarding the set off of plaintiff's settlement with John Parnell at the December 14, 2005, hearing, following which the trial court held appellants in criminal contempt, ordered them to serve 30 days in jail, and entered a judgment against them. Appellants raised the issue again in a motion to amend the judgment, which the trial court denied.

Although appellants appealed the trial court's decision to this Court, they stipulated to dismiss their appeal because of a purported settlement that also led to the dismissal of the entire action, including the contempt order. *Droomers v Parnell*, unpublished order of the Court of Appeals, entered April 21, 2006 (Docket No. 268480). Appellants then filed a frivolous federal lawsuit against the previous trial court judge and plaintiff's attorneys, which resulted in the imposition of sanctions against them in federal court. They also filed a complaint with the Judicial Tenure Commission against the same trial court judge, which was ultimately dismissed.

This Court affirmed the trial court's reinstatement of the contempt judgment, stating "there was sufficient evidence that appellants committed fraud, misrepresentation or other misconduct to warrant relief from the judgment of dismissal." *Droomers v Parnell*, unpublished opinion per curiam of the Court of Appeals, issued February 12, 2009 (Docket No. 278162), slip op at 3. This Court specifically rejected the argument that the reinstatement of the contempt judgment revived appellants' right to appeal the December 14, 2005, order. *Id.* at 4. This Court

also determined that appellants failed to create a question of fact regarding the amount of damages and remanded the matter for recalculation of the amount of statutory interest to be incorporated in the judgment. *Id.* at 5. Appellants again raised the issue regarding the set off of plaintiff's settlement with Parnell in their motion for reconsideration, which this Court denied. *Droomers v Parnell*, unpublished order of the Court of Appeals, entered April 3, 2009 (Docket No. 278162). Our Supreme Court likewise rejected the argument in denying appellants' application for leave to appeal. *Droomers v Parnell*, 485 Mich 895; 772 NW2d 422 (2009).

Despite this Court's remand for the narrow purpose of recalculating the amount of statutory interest, appellants again raised the set off issue in the trial court and subpoenaed Parnell to testify at a deposition. The trial court recognized that both the previous trial court judge and this Court had already rejected that argument and quashed the subpoena. The court denied appellants' motion for reconsideration.

In spite of the fact that their argument regarding plaintiff's settlement agreement with Parnell had been rejected numerous times, appellants again asserted it in their motion for entry of an order of satisfaction of judgment. This time, the trial court imposed sanctions for filing a frivolous motion. The history of this case illustrates that the motion was not warranted by existing law or a good-faith argument for the extension or modification of existing law. Further, the trial court did not clearly err in finding that the motion "is but one more continuous and repetitive motion in furtherance of [appellants'] attempt to harass Plaintiff and increase the cost of litigation." Once the trial court determined that appellants violated MCR 2.114(D), the imposition of sanctions was mandatory. MCR 2.114(E); *Guerrero,* 280 Mich App at 678. Lastly, contrary to appellants' argument, MCR 2.114 is not limited to frivolous claims and defenses, or only to pleadings, but rather applies to "all pleadings, *motions*, affidavits, and other papers provided for by these rules." MCR 2.114(A) (emphasis added). The trial court did not clearly err by imposing sanctions against appellants under MCR 2.114.

Affirmed.

/s/ Henry William Saad
/s/ Kirsten Frank Kelly
/s/ Pat M. Donofrio